

## Group questions independence of planning auditor

**by Douglas Tallman and Margie Hyslop**

*Gazette Staff Writers*

July 15, 2005

The group at the center of the Clarksburg development controversy is raising questions about the Montgomery County Council's choice to conduct an audit of county planning practices.

On Tuesday, the council announced that it would have its own research arm, the Office of Legislative Oversight, conduct the first levels of the review instead of hiring an outside consultant.

"The citizens certainly wanted someone from outside. Having an independent, outside person is the way to try to restore integrity to the planning process," said Norman Knopf, an attorney representing the Clarksburg Town Center Advisory Committee.

The committee's dogged research uncovered falsified documents that masked the construction of at least 10 homes that exceed height and setback restrictions. The group's evidence led the Montgomery County Board, which oversees the Department of Park and Planning, to call for a top-to-bottom review of the development regulation.

Council President Thomas E. Perez (D-Dist. 5) of Takoma Park defended the OLO choice.

"Can they [detractors] cite one of OLO's investigations that was compromised in any way shape or form? If they can, I will be absolutely shocked," Perez said. "Anyone who would question OLO doesn't know what they're talking about."

But on June 30, when the Department of Park and Planning announced it would seek the outside review, it was contemplating someone outside the county payroll performing the review.

"I want to make sure we do a very extensive and exhaustive search," he said then. "There are a number of folks who have independence. That's why I'm reluctant to open up my Rolodex and see who I know. I don't think that's in the public interest."

### Acting now, not later

Perez and others said Wednesday that OLO could begin the investigation right away; it would take a week to decide the audit's scope and choose an outside investigator.

"They've got staff investigating all those allegations as we speak, so they can see how they all roll up," said Councilman Michael J. Knapp (D-Dist. 2) of Germantown, whose district includes Clarksburg.

Although an outside firm may seem more independent, some say a hired gun might skew an investigation in favor of the county.

"If you are paying someone to do an investigation, whose interests do they represent?" said Wayne A. Hays, a preservationist and first vice president of the Montgomery County Civic Federation.

He said he wanted Thomas J. Dagley, the county's inspector general, to conduct a review.

Dagley has said his office should be part of the review. He did not return telephone calls seeking comment.

OLO is expected to complete its study by early September, when the council returns from its August recess. Perez said the OLO study will help the council decide which steps to take next. At that point, Dagley

accounting firm could be brought in, he said.

"We have a crisis of public confidence ... [and] we have to correct that crisis," Perez said. "I want to be sure whether Clarksburg is an isolated incident or the tip of the iceberg."

### **Millions at stake**

The Planning Board is scheduled to consider staff-recommended penalties of \$1.2 million at a meeting on Dec. 15. Newland Communities, which is developing the Clarksburg Town Center, says it has done nothing wrong and has followed the rules. "We believe the violations were technical at best," spokesman Charlie Maier said.

On the other hand, residents are concerned the board is acting too quickly and without enough information. "I said Knopf, the advisory committee's attorney.

"The thing will come to a conclusion before the council finds out what went wrong," he said.

Fines should wait until the board has considered other allegations, including the failure of the developers to provide amenities stipulated in development plans, Knopf said.

"People wonder why citizens are so skeptical that the county can't enforce anything against the developers," Knopf said.

Possibly, the staff-recommended fine is too low.

Jeff Hooke, chairman of the Maryland Tax Education Foundation in Chevy Chase, calculated that the developers made at least \$20,000 extra profit on each of the homes.

"That is \$10 million in added profit for breaking the rules. The county has to fine them at least this much. Also, to deter others from similar actions, there must be some punitive fine perhaps another \$10 million. That's \$20 million," Hooke said in an e-mail. "If you make \$10 million from breaking the law, and pay only \$10 million, you have an incentive to break the law."

Knapp, however, said nothing compels the board to issue the fines at the July 28 meeting. Planning Board Chairman Derick P. Berlage would not predict what the five-member board would do.

### **Who's in charge?**

The controversy has raised questions about who is responsible for verifying compliance. Some of the board's conclusions seem foregone.

"It's abundantly clear that we don't have enough enforcement people," Perez said.

The problems also highlight a "bigger picture issue," in Montgomery's Planning Department, said Dr. Robert L. Smith, executive director of Neighbors for a Better Montgomery.

"Everybody down there is under incredible pressure from \$500-an-hour development attorneys, high-level elected officials," he said.

Also known as NeighborsPAC, the group was formed to combat rapid development. It has criticized Executive Douglas M. Duncan (D) and six of the nine council members for getting more than half of their campaign money from developers.

In the audit, OLO needs to look at why it took so long for Park and Planning to act on the Clarksburg

violations, Goldstein said. Complaints first surfaced in August 2004 that some homes were taller than the steeple of historic Clarksburg United Methodist Church, an established benchmark on building height.

"We've always been a complaint-driven inspection staff -- [we] don't go out to every project and measure," said planning review director Rose G. Krasnow, who joined the Planning Department in November.

Staff turnover is one reason for delays in checking complaints about buildings in Clarksburg, she said.

Montgomery County Civic Federation President Dan Wilhelm said the Planning Board needs to clarify planners' authority to lift restrictions. The board also needs to make sure that the public is informed and can weigh in on significant changes.

"Planning staff needs firm standards," Wilhelm said. "They are supposed to have authority to make changes, [but] what's the definition of 'minor'? My fear is there's a lot more of this."

The council expects a report on staffing needs in two weeks and could raise fees charged developers for more inspectors, he said.

On Tuesday, Duncan wrote Berlage and Perez to endorse the audit and the fees-for-inspectors plan.

"The recent revelation that developers in Clarksburg violated height and setback restrictions was a serious abuse of the public trust, one that highlights shortcomings in the current development review process that calls for serious sanctions. I am writing to urge that harsh, significant and meaningful penalties be assessed in this case," Duncan's letter read.

The letter drew a rebuke from one of Duncan's natural allies, builders, who objected to receiving all the blame for the Clarksburg violations.

"The mistakes and height/setback violations that occurred in Clarksburg are the shared responsibility of the public sector and the building industry," read a statement Thursday from Maryland-National Capital Building Industry Association.